

defined as the “type of treatment that is not less favorable than that an interconnecting CTU provides to itself, or its affiliates or other CTUs.”<sup>64</sup>

35. The Notice requests comments on issues relating to Signaling System 7 (SS7).<sup>65</sup> The Texas PUC has specified in its Interconnection Rule that carriers should provide each other with SS7 connectivity where “technically available.”<sup>66</sup> The PUC considered requiring SS7 at any “technically feasible” point, but concluded that “technically available” is more appropriate since it recognizes the infrastructure modernization commitments made by SWB and GTE, as a part of their election of an incentive regulation plan, pursuant to PURA95 §3.358. One of the requirements of this section in the state law is that such companies must install SS7 capability in all central offices by January 1, 2000.<sup>67</sup> (The Texas PUC notes, however, that regardless of whether SS7 is technically available, carriers are required to meet a set of minimum interconnection standards that include providing each other with signaling elements and protocols used in call routing, where “technically feasible.”<sup>68</sup>)

#### **d. Pricing of Interconnection, Collocation, and Unbundled Network Elements**

36. The Notice requests comments on whether the FCC should establish national pricing principles to promote local exchange competition and to facilitate negotiations, arbitration, and review of agreements between ILECs and competitive providers.<sup>69</sup> Specifically, the FCC

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<sup>64</sup> PUC Subst. R. 23.97(b)(13).

<sup>65</sup> Notice, para. 108.

<sup>66</sup> PUC Sub. R. 23.97(d)(2)(C)

<sup>67</sup> PURA95 §3.358(d)(1).

<sup>68</sup> PUC Sub. R. 23.97(e)(2)(D)

<sup>69</sup> Notice, para. 119.

suggests that Section 251 of the 1996 Act requires that the FCC “establish pricing principles interpreting and further explaining the provisions of section 252(d) for the states to apply in establishing rates in arbitration and in reviewing BOC statements of generally available terms and conditions.”<sup>70</sup> The Texas PUC strongly disagrees with the FCC’s characterization of the roles assigned to federal and state regulators in establishing rates for interconnection. Section 252(c)(2) of the 1996 Act clearly gives state commissions the authority and responsibility to “establish any rates for interconnection, services, or network elements” in resolving disputes through compulsory arbitration.

37. Notwithstanding our concerns regarding the FCC’s role in establishing rates for interconnection, the Texas PUC will offer the following comments on the questions posed in the portion of the Notice concerning costing and pricing.

38. A major factor in establishing rates in a competitive environment is the reliance on incremental costs, specifically long-run incremental costs (LRIC). It must be recognized that the “costs” used by the FCC in setting rates for most interstate services are, in fact, fully-distributed revenue requirements. The states have consistently demonstrated their willingness to move away from the embedded, fully-distributed costing methods of the past and toward the incremental cost approach that is most appropriate in a competitive environment. The Texas PUC has been setting competitive rates based on incremental costs for almost ten years. State regulators in Texas and Oregon have led the way in developing comprehensive incremental costing studies for unbundled services. Experience has shown that there can be variations among states, among carriers, and

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<sup>70</sup> Notice, para. 118.

even among customers with respect to both the methodology and nature of the inputs that may be included in a LRIC computation for a specific unbundled service. All of these factors support our position that state regulators are in a good position to take the lead in evaluating rate structures and prices for interconnection elements based on LRIC costs.

39. The Texas PUC is concerned that pricing guidelines adopted by the FCC may in fact hamper existing efforts to further competition through the development of costing and pricing standards as required by the Texas statute. PURA95 §3.457 requires the Texas PUC to adopt a pricing rule by April 1, 1997. It also requires SWB and GTE to file LRIC cost studies to be used in pricing not later than November 1, 1996. In adopting the pricing rule, the PUC is required to: a) ensure that prices for monopoly services remain affordable; b) ensure that prices for competitive services are not unreasonably preferential, prejudicial, or discriminatory, are not subsidized either directly or indirectly by noncompetitive services, and are not predatory or anticompetitive; and c) that each service recovers the appropriate cost, including appropriate joint and common costs of facilities and functions required to provide the service.<sup>71</sup>

40. The Notice seeks comments on the use of LRIC-based pricing methodologies for interconnection elements.<sup>72</sup> As described above, the Texas PUC has used LRIC-based pricing methodologies for many years, and we support the use of LRIC-based methods to set rates for interconnection services and unbundled network elements. In particular, the Texas PUC strongly supports the recommendation made by the Local Competition Work Group of the NARUC Staff

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<sup>71</sup> PURA 95, §3.457(b).

<sup>72</sup> Notice, para. 124.

Subcommittee on Communications;<sup>73</sup> namely, that "network components prices should recover at least TSLRIC and, subject to state commission oversight and review, may include a markup over TSLRIC to reflect a reasonable recovery of joint and common costs."<sup>74</sup>

41. The Notice also requests comment on how to deal with the problems inherent in allocating common costs and overheads in setting rates based on LRIC.<sup>75</sup> The costing rule adopted by the Texas PUC requires LECs subject to that rule to identify costs for basic network functions, costs for tariffed services, costs common to groups of basic network functions, and costs common to groups of tariffed services.<sup>76</sup> The Texas PUC staff has received LRIC studies on dozens of unbundled network elements in response to our rule, although the studies are not scheduled to be completed until late this year. Our experience shows that the studies are complex and in some cases contain controversial components that may or may not be included in the LRIC ultimately approved. It is not yet known what percentage of the LECs' embedded costs will not be directly reflected in LRIC studies but will instead be considered as common costs or overheads. It is only through detailed analysis of the inputs and assumptions contained within the cost studies that the Texas PUC will be able to determine the appropriate allocation of joint and common costs, and the appropriate method for recovering those costs in Texas, consistent with the PUC's overall pricing policy. The Texas PUC therefore urges the FCC to refrain from attempting to mandate specific methods of allocating or recovering joint and common costs on a

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<sup>73</sup> NARUC Staff Subcommittee on Communications, Local Competition Work Group Summary Report, February 1996.

<sup>74</sup> Notice, para. 127.

<sup>75</sup> Notice, para. 130.

<sup>76</sup> Texas PUC Subst. R. 23.91 (attached as Attachment V).

national scale. If the FCC believes such a mandate is necessary, the Texas rules would be an appropriate starting point for a national policy.

42. The Notice requests comments on whether interconnection and unbundled element rates should be set on a geographically- and class-of-service averaged basis for each ILEC or whether these rates should be deaveraged in some form.<sup>77</sup> The Texas PUC believes that it is premature to mandate the averaging or deaveraging of rates without a determination of costs and the review of the policy underlying existing rate levels and rate structures for monopoly services offered by ILECs. Further, the issues surrounding geographic deaveraging and rate rebalancing are being addressed in the FCC's Universal Service rulemaking, and should not be addressed in this proceeding without the full recognition of all support mechanisms and other safeguards.

43. The Notice seeks comment on the establishment of outer boundaries or rate ceilings for interconnection prices in lieu of a specific pricing methodology. The Texas PUC believes that is it not appropriate to establish outer boundaries or rate ceilings for interconnection prices by proxy. However, if forced to choose among the various methods proposed to determine the proxy for rate ceilings, the Texas PUC supports the use of rates in existing interconnection and unbundling arrangements between ILECs and neighboring ILECs as the least objectionable method of setting rates by proxy. The Texas PUC believes that if states can modify the existing interconnection agreements, as necessary, this methodology would meet the three-part test set forth in the Notice.<sup>78</sup> However, such interconnection agreements must be limited to non-toll

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<sup>77</sup> Notice, para. 133.

<sup>78</sup> Notice, para. 135.

traffic such as the provision of EAS/EAS-like services. The Texas PUC is particularly concerned with the proposal to use switched access rates as a proxy for a rate ceiling after a part or all of the transport interconnection charge (TIC) and the carrier common line charge (CCLC) is excluded. Absent cost information, it is not possible to determine whether an appropriate amount of joint and common costs would be recovered if the TIC and CCLC are eliminated. Similarly, a generic cost study would fail to reflect the possible differences in costs among states -- and among serving companies -- of providing interconnection, collocation and unbundled elements due to technical, demographic and geographical factors.

44. The Notice requests comments on whether there is a need to establish price floors for interconnection and unbundled elements.<sup>79</sup> The regulatory flexibility plan in place in Texas requires that prices for competitive and discretionary services be set above LRIC. Such a floor serves as a safeguard to protect ILECs from confiscatory rates while protecting customers from potential cross-subsidization. The Texas PUC urges the FCC not to establish a TSLRIC floor on retail services (such as basic local exchange service) in this proceeding. The structure of local retail rates is expected to be addressed in the FCC's ongoing Universal Service proceeding.<sup>80</sup> The Texas PUC believes that any realignment of rates should be linked to a reformation of the Universal Service Fund mechanisms. In addition, we have previously mentioned that we are required to complete a comprehensive pricing rule for all ILEC services. It is reasonable to

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<sup>79</sup> Notice, para. 143.

<sup>80</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Notice of Proposed Rulemaking and Proposed Order Establishing Joint Board, FCC 96-93 (March 8, 1996).

require interconnection prices to be maintained above a LRIC floor in anticipation that other costing and pricing issues will be resolved in separate state and federal proceedings.

45. The Notice seeks comments on whether prices for interconnection and unbundled network elements should recover embedded costs or universal service costs.<sup>81</sup> As discussed previously, the Texas PUC firmly believes that regulators cannot begin to answer pricing questions until incremental cost studies on unbundled network elements are completed and we more precisely quantify the disparity between embedded and incremental costs. States must be allowed the discretion to determine, after appropriate review and consistent with state policies, the extent to which costs such as those described in these sections should be included in specific prices.

46. The Notice requests comments on whether the FCC should adopt rate structure principles for states to apply in meeting the pricing responsibilities under §252(d)(1).<sup>82</sup> As discussed in paragraph 39, the Texas PUC believes that states have been given the authority and responsibility to determine issues regarding rate structure and rate levels in the arbitration process, and many states are moving forward in implementing the interconnection policies of the 1996 Act. Any detailed principles on rate structure for interconnection elements adopted by the FCC should be used only: a) as a model for a state commission to apply at the state's discretion, or b) in the event that a state commission fails to carry out its responsibilities under Section 252 of the 1996 Act. The Texas PUC suggests that the FCC pattern its rate structure upon the actual results of

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<sup>81</sup> Notice, paras. 144-145.

<sup>82</sup> Notice, para. 152.

successful interconnection agreements in the states. Further, the FCC should be prepared to amend its model rate structure and rate levels frequently, in concert with trends in real-time negotiated agreements.

47. The Notice requests information on the types of state policies that would, or would not, be inconsistent with the requirements of §251 and the purposes of Part II and Part III of the Act.<sup>83</sup> The Texas PUC believes that the language in §251(d)(3) should be included in the FCC's rules without modifications. The Texas PUC has addressed and continues to address issues regarding the development of competitive markets including the requirements in the 1996 Act that pertain to interconnection, unbundling, and collocation. The Texas PUC believes that the language in §251(d)(3) of the 1996 Act is sufficiently broad and grants state commissions the ability to address issues that are consistent with the 1996 Act. It notes that retaining the language in §251(d)(3) would not preclude any party from appealing to the FCC or Federal Courts if the policy, rules, or regulations promulgated by a state commission are perceived to be inconsistent with the 1996 Act.

### **3. Resale Obligations of Incumbent LECs**

48. The Notice requests comment on the application of §251(c)(4), concerning the duty of ILECs to offer certain services for resale at wholesale rates.<sup>84</sup> The Texas PUC believes that this provision, as well as associated ones in §252, may be reconciled with important resale-related

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<sup>83</sup> Notice, para. 157.

<sup>84</sup> Notice, paras. 172-173.



sections in PURA95, such as §§3.251, 3.252, and 3.453.<sup>85</sup> Specifically, in its recent *Order Addressing Certified Issues* in Docket No. 14658,<sup>86</sup> the Texas PUC found that §§251 and 252 of the 1996 Act allow significant room for states to prescribe additional alternatives under which new competitors may provide local service. As stated in this *Order*, “a tariff approved in compliance with PURA95 can coexist with the arbitration and negotiation process contemplated under the [1996] Act.”<sup>87</sup> Thus the limitations on the availability of flat-rated ILEC services for resale contained in PURA95 §3.2532 (Attachment II) are not expressly preempted, as purchasing services from flat-rated resale tariffs is only one possible avenue a reseller may pursue as a means of providing local service. The holder of a Certificate of Operating Authority (COA),<sup>88</sup> while unable to purchase services from such flat-rated resale tariffs, may still seek to obtain services for resale under terms developed using the negotiation or arbitration provisions of the 1996 Act. For that matter, the holder of a Service Provider Certificate of Operating Authority (SPCOA)<sup>89</sup> also may seek different terms through these provisions.<sup>90</sup> These views are consistent with the conclusion that only arbitrated agreements and BOC statements of generally available terms and conditions for resale must necessarily meet the requirements of §251(c)(4)(B) and §252(d)(3) of the 1996 Act; negotiated agreements need not meet such requirements.<sup>91</sup>

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<sup>85</sup> These sections are included in Attachment II.

<sup>86</sup> Texas PUC Docket. No 14658, *Application of Southwestern Bell Telephone Company, GTE Southwest, Inc. and Contel of Texas, Inc. for Approval of Flat-Rated Local Exchange Resale Tariffs Pursuant to PURA 1995 §3.2532*. The *Order* was issued on April 10, 1996, and is included as Attachment III.

<sup>87</sup> *Order Addressing Certified Issues*, p. 6.

<sup>88</sup> PURA95, §3.2531.

<sup>89</sup> PURA95, §3.2532.

<sup>90</sup> The Texas PUC has not taken a position on whether a COA holder could purchase a flat-rated resale service if such service was incorporated into a §252(i) agreement.

<sup>91</sup> 1996 Act, §252(e)(2) and (f)(2).

49. The Notice requests comment on the provision in §251(c)(4)(B) authorizing a state commission to, “consistent with regulations prescribed by the FCC under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.”<sup>92</sup> The Texas PUC believes that states should be allowed to prescribe resale restrictions needed to prevent a competitor from exploiting an implicit subsidy required by the state (until such subsidies are replaced by explicit, non-discriminatory subsidies). The cases cited in the Notice<sup>93</sup> of prohibiting the resale of residential local exchange service to a business and of Lifeline service to a non-qualifying, higher-income subscriber certainly qualify as good examples. PURA95 §3.453(f)(3), however, also indefinitely prohibits “the resale of local exchange or directory assistance flat rate services as a substitute for usage sensitive services,” even after the other resale restrictions are eliminated.<sup>94</sup>

50. The Notice requests comment on the desirability of imputation rules.<sup>95</sup> The Texas PUC believes that such rules may indeed serve to prevent anti-competitive price squeezes. In this connection, PURA95<sup>96</sup> requires the Texas PUC to adopt imputation rules by December 1, 1996. With regard to the concern raised in the Notice<sup>97</sup> about requiring imputation to such below-cost services as basic residential local exchange service, the Texas PUC notes that §3.454(d) does provide such an exemption for ILECs electing regulation under PURA95’s Subtitle H (Incentive

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<sup>92</sup> Notice, para. 176.

<sup>93</sup> Notice, para. 176.

<sup>94</sup> PURA95 §3.453, Resale, is included in Attachment II.

<sup>95</sup> Notice, paras. 184-188.

<sup>96</sup> PURA95 §3.454, Imputation, is included in Attachment II.

<sup>97</sup> Notice, para. 185.

Regulation) or Subtitle I (Infrastructure Plan for Rate of Return Companies).<sup>98</sup> Moreover, §3.454(i) allows the Texas PUC to waive the “imputation requirement for any public interest service such as 9-1-1 service and dual party relay service if the [Texas PUC] determines that the waiver is in the public interest.” Arguably, such a waiver could be obtained generally for basic local service, especially if such service is found to receive intrastate subsidy flows.

### **C. Obligations Imposed on “Local Exchange Carriers” by Section 251(b)**

#### **1. Resale**

51. The Notice requests comment on the types of resale conditions new (non-incumbent) LECs may legitimately impose under §251(b)(1).<sup>99</sup> The only resale requirement expressly imposed on new competitors in PURA95 is found in §3.453(e): “A holder of a certificate of operating authority or service provider certificate of operating authority has the reciprocal obligation to permit local exchange companies to resell its existing loop facilities at its regularly published rates if the local exchange company has no loop facilities and has a request for service.”<sup>100</sup> The Texas PUC strongly endorses broad reciprocity as the best facilitator of fair and efficient competition.

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<sup>98</sup> The specific exemption applies to “the price of a local exchange telephone service while the price is capped under Subtitle H or I...”

<sup>99</sup> Notice, paras. 196-197.

<sup>100</sup> PURA95, §3.453(e).

## **2. Number Portability**

52. The Notice references the continuing FCC proceeding<sup>101</sup> addressing number portability.<sup>102</sup> The Texas PUC supports the FCC's efforts to develop a uniform national policy on number portability. The Texas PUC filed comments dated August 30, 1995, in response to the Number Portability NPRM, and refers the FCC to those comments.

## **3. Dialing Parity**

53. Pursuant to instructions in the Notice,<sup>103</sup> the Texas PUC is filing separate comments on dialing parity.

## **4. Access to Rights-of-Way**

54. Pursuant to instructions in the Notice, the Texas PUC is filing separate comments on access to rights-of-way.

## **5. Reciprocal Compensation for Transport and Termination of Traffic**

55. The Notice requests comments on whether "transport and termination of telecommunications" under §251(b)(5) is limited to certain types of traffic.<sup>104</sup> In particular, the Notice seeks comments on whether traffic passing between non-competing neighboring LECs is included in the definition of "transport and termination of telecommunications." The Texas PUC believes that the FCC's interconnection rule should recognize that different non-toll calling plans

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<sup>101</sup> *Telephone Number Portability*, CC Docket No. 95-116, 10 FCC Rd 12350 (1995) (Number Portability NPRM).

<sup>102</sup> Notice, para. 199.

<sup>103</sup> Notice, para. 290.

<sup>104</sup> Notice, para. 230.

exists in various states. Some of these non-toll plans reflect EAS/EAS-like traffic between non-competing local exchange carriers. States would be in a better position to prescribe reciprocal compensation rates that take into account the unique types of traffic that exist in their individual states.

56. In its Interconnection Rule, the Texas PUC does not prescribe rate levels or rate structures; instead, LECs are required to negotiate interconnection rates, terms, and conditions. The rule does provide the framework for the application of interconnection rates by specifying the types of traffic that are subject to the interconnections rates. Local interconnection rates apply to traffic that originates and terminates within the mandatory single or multiexchange local calling area of an ILEC as well as mandatory EAS traffic transported between exchanges served by an ILEC. With respect to traffic that originates and terminates within the mandatory EAS calling areas between exchanges of two or more ILECs or within an optional calling area, whether between exchanges of one ILEC or between exchanges of two or more ILECs, the new entrant will receive rates, terms, and conditions that are not less favorable than those between non-competing LECs for similar traffic. New entrants can also negotiate new EAS arrangements with Southwestern Bell and GTE. Furthermore, new entrants are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings. Within two years of the effective date of the rule, the Texas PUC must complete an initial review of the policies regarding the application of local interconnection rates to traffic not currently subject to local interconnection rates.

57. The Notice requests comment on whether the FCC should establish a generic pricing methodology or impose a ceiling with respect to reciprocal compensation rates.<sup>105</sup> The Texas PUC urges the FCC to refrain from prescribing a pricing methodology because any particular pricing methodology may not be suitable to all states. The 1996 Act mandates that reciprocal compensation reflect costs.<sup>106</sup> Every state must have the discretion to determine, based on the evidence presented and its statutory mandates and pricing policies, issues such as the appropriate reciprocal compensation rates, the underlying cost methodology, the allocation of joint and common costs, the need to permit the recovery of reasonable profit, and the need for symmetrical compensation arrangements between competing local exchange carriers. With respect to bill and keep arrangements, states should be permitted to consider bill and keep as one of the pricing options without the FCC limiting the circumstances where a bill and keep arrangement may apply.<sup>107</sup> This is especially true when statutory provisions require the implementation of bill and keep compensation arrangements. As an example, PURA95 contemplates that if negotiations for compensation arrangements fail, then the carriers will terminate traffic on a bill-and-keep basis for nine months and the Texas PUC will establish interconnection rates, terms, and conditions during these nine months.<sup>108</sup>

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<sup>105</sup> Notice, para. 234.

<sup>106</sup> 1996 Act, §252(d).

<sup>107</sup> Notice, para. 243.

<sup>108</sup> PURA95, §3.458.

**D. Duties Imposed on "Telecommunications Carriers" by Section 251(a)**

58. The Notice requests comments whether under §251(a), non-ILECs receiving any interconnection request from another carrier can connect directly or indirectly at its discretion.<sup>109</sup> The Texas PUC believes that in the interest of promoting a truly competitive local exchange market, the obligations under §251(a) should apply to all telecommunication carriers, incumbent and non-ILECs, equally. If non-ILECs are allowed the discretion to determine whether to offer direct or indirect connection to another carrier, then the goal of encouraging the most efficient interconnection and thereby bringing the benefits of a competitive market to all consumers will not be realized.

**E. Number Administration**

59. Pursuant to instructions in the Notice, the Texas PUC is filing separate comments relating to number administration.

**F. Exemptions, Suspensions, and Modifications**

60. The Notice correctly concludes that determinations under §251(f) must be made by states,<sup>110</sup> and the Texas PUC therefore recommends that individual states should be allowed to prescribe rules and standards necessary for meeting the obligations under this section.

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<sup>109</sup> Notice, para. 248.

<sup>110</sup> Notice, para. 261.

**G. Continued Enforcement of Exchange Access and Interconnection Regulations**

61. The Notice seeks comments on whether any aspect of the Notice may affect existing exchange access and interconnection restrictions and obligations (including receipt of compensation).<sup>111</sup> The Texas PUC notes that the provisions regarding interconnection compensation in its Interconnection Rule are consistent with the 1996 Act. The Texas Interconnection Rule delineates the type of traffic that is subject to local interconnection rates and EAS or EAS-like interconnection arrangements. Within the next two years, the Texas PUC expects to investigate whether local interconnection rates should apply to traffic not currently subject to local interconnection rates. The Texas PUC also intends to address issues relating to universal service and other support flows that may be currently recovered from intrastate switched access rates. The Texas PUC urges the FCC to prescribe rules which give states the flexibility to restructure its intrastate access charges in the future, if necessary.

**H. Advanced Telecommunications Capabilities**

62. The Notice seeks comment on how the FCC might encourage deployment of advanced telecommunications capabilities within the context of implementing measures to promote competition in the local telecommunications market. The Texas Legislature addressed this issue in §3.358<sup>112</sup> of PURA95. Consistent with the principles stated in §3.358, regulatory policy must (1) provide supply-side requirements and demand-side incentives to ensure the availability of advanced telecommunications capabilities, (2) rely on competition to drive the deployment of such advanced capabilities, and (3) have sufficient safeguards to ensure the

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<sup>111</sup> Notice, para. 262.

<sup>112</sup> §3.358 is included in Attachment II.



continued provision of adequate and reliable service to all customers during the transition to effective competition.

63. Our state legislature has given the Texas PUC a sizable number of tools with which to build an advanced infrastructure within our state, and which might be utilized on a national scale. Discounts are to be provided for services used for distance learning<sup>113</sup> and advanced network services are to be provided to specific public entities at rates minimally above long-run incremental costs. ILECs may elect to provide specific infrastructure improvements in return for alternative regulatory treatments.<sup>114</sup> In addition, the grants and loans available under the Telecommunications Infrastructure Fund (TIF)<sup>115</sup> will provide demand-side incentives for incumbents as well as new entrants to provide advanced services to educational entities.

### **III. Provisions of Section 252**

#### **A. Arbitration Process**

64. The Notice seeks comment on what circumstances should constitute a state commission's failure to act under §252(e)(5).<sup>116</sup> The Texas PUC believes that a state commission's failure to carry out its responsibilities under the Act will occur in only two instances: (a) the state commission's failure to complete an arbitration proceeding within the time limits required by §252(b)(4)(C), or (b) the state commission's failure to approve an agreement within the time limits prescribed by §252(e)(4). The Texas PUC is concerned that allegations of

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<sup>113</sup> PURA95, §3.605.

<sup>114</sup> PURA95, Subtitles H and I

<sup>115</sup> PURA95, §3.606.

<sup>116</sup> Notice, para. 266.

other “failures” by a state commission, particularly allegations that the state commission has “fail(ed) to act to *properly* carry out its responsibility” under the Act, should not be a basis upon which to invoke the FCC’s jurisdiction under §252(e)(5). The Act is clear that review of a state commission’s determinations is by appeal to Federal district court<sup>117</sup>, not by a request for preemption by the FCC under §252(e)(5). A state commission’s determinations under the Act, particularly its determination of which requirements of state law to apply under §252(e)(3), should not be subject to FCC review in the guise of an allegation that the state commission has “fail(ed) to act to carry out its responsibility under this section.”

#### **B. Section 252(i)**

65. The Notice seeks comment on several issues relating to §252(i) of the 1996 Act.<sup>118</sup> The Texas PUC declines to comment on these issues at this time, but reserves the right to respond to other parties’ comments.

#### **IV. Conclusions**

66. The Texas PUC recognizes that the FCC has quite a challenge before it in developing rules for local competition that balance all interests. The Texas PUC has been struggling with these same difficult issues as it has been implementing its new state telecommunications law, PURA95. The Texas PUC already has in place an Interconnection Rule, and state proceedings are underway to implement additional mechanisms to effect local competition in Texas. Although specific federal rules may be appropriate in some cases, guiding principles would be more suitable for those states, such as Texas, that are already actively implementing local competition

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<sup>117</sup> 1996 Act, §252(e)(6).

<sup>118</sup> Notice, para. 269-272.

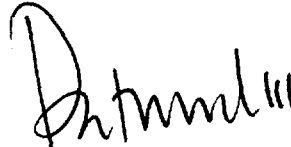
Respectfully submitted,

Public Utility Commission of Texas

7800 Shoal Creek Blvd.

Austin, Texas 78757

May 13, 1996



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Pat Wodd, III  
Chairman



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Robert W. Gee  
Commissioner



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Judy Walsh  
Commissioner

**Attachment I**

**PUC Substantive Rule 23.97**

**§23.97 Interconnection.**

- (a) **Purpose.** The purpose of this section is to ensure that all providers of telecommunications services which are certificated to provide local exchange service, basic local telecommunications service, or switched access service within the state interconnect and maintain interoperable networks such that the benefits of local exchange competition are realized as envisioned under the provisions of the Public Utility Regulatory Act of 1995. The commission finds that interconnection is necessary to achieve competition in the local exchange market and is, therefore, in the public interest.
- (b) **Definitions.** The following words and terms, when used in this section, shall have the following meaning, unless the context clearly indicates otherwise:
- (1) **Certificated telecommunications utility (CTU)** — A telecommunications utility as defined in §23.3 of this title (relating to Definitions).
  - (2) **Commission proceeding** — A proceeding as defined in subchapter A of the commission's procedural rules.
  - (3) **Customer** — An end-user customer.
  - (4) **Dominant certificated telecommunications utility (DCTU)** — A CTU that is also a dominant carrier with respect to local exchange service.
  - (5) **Exchange area** — The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one CTU. An exchange area may also be referred to as an exchange.
  - (6) **Extended Area Service (EAS)** — That definition given in §23.3 of this title.
  - (7) **Extended Local Calling Service (ELCS)** — Service provided pursuant to §23.49 of this title (relating to Telephone Extended Area Service (EAS) and Expanded Toll-free Local Calling Areas).
  - (8) **Identity** — The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.
  - (9) **Incumbent local exchange carrier (ILEC)** — That definition given in §23.3 of this title.
  - (10) **Interconnection** — The termination of local traffic (including basic telecommunications service as delineated in §24.32 of this title (Relating to Universal Service) or ISDN as defined in §23.69 of this title (Relating to Integrated Services Digital Network (ISDN))) and/or EAS/ELCS traffic of a CTU using the local access lines of another CTU, as described in subsection (d)(4)(A)(i) of this section. Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in §23.57 of this title (relating to Telecommunications Privacy), unless otherwise permitted in this section.
  - (11) **Local calling area** — That definition given in §23.3 of this title.
  - (12) **Negotiating party** — A CTU or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.
  - (13) **Non-discriminatory** — Type of treatment that is not less favorable than that an interconnecting CTU provides to itself or its affiliates or other CTUs.
  - (14) **Non-dominant Certificated Telecommunications Utility (NCTU)** — A CTU that is not a DCTU and has been granted a certificate of convenience and necessity (CCN) (after September 1, 1995, in an area already certificated to a DCTU), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) to provide local exchange service.
  - (15) **Small CTU** — A CTU with fewer than 2.0% of the Nation's subscriber lines installed in the aggregate nationwide.

- (16) **Small Incumbent Local Exchange Carrier (Small ILEC)** — An ILEC serving fewer than 31,000 access lines.

(c) **Application and Exceptions.**

- (1) **Application.** This section applies to all CTUs providing local exchange service.
- (2) **Exceptions.** Except as herein provided, all CTUs providing local exchange service must comply with the requirements of this section.
  - (A) **Holders of an SPCOA.**
    - (i) The holder of an SPCOA that does not provide dial tone and only resells the telephone services of another CTU shall be subject only to the requirements of subparagraphs (B)(ii) and (D)(i)-(vii) of subsection (e) (1) of this section and subsection (i) (1) -(3) of this section.
    - (ii) The underlying CTU providing service to the holder of an SPCOA referenced in subparagraph (A)(i) of this paragraph shall comply with the requirements of this section with respect to the customers of the SPCOA holder.
  - (B) **Small ILECs.**
    - (i) Except as provided in this subparagraph, small ILECs are exempt from this section until September 1, 1998, on which date all provisions of this section shall apply and other CTUs providing local exchange service may request interconnection in the small ILEC's exchanges. After September 1, 1998, this section shall apply to small ILECs to the extent required by 47 United States Code §251(f) (1996).
    - (ii) Notwithstanding the requirement in clause (i) of this subparagraph, small ILECs shall terminate traffic of a CTU which originates and terminates within the small ILEC's ELCS or EAS calling scope, where the small ILEC has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A)(i) of this section. Prior to September 1, 1998, this clause shall apply only to traffic, described in subsection (d)(4)(A)(i) of this section, originated by a CTU in territory other than territory served by a small ILEC.
  - (C) **Rural Telephone Companies.**
    - (i) This section shall also apply to rural telephone companies as defined in 47 United States Code §153 (1996) to the extent required by 47 United States Code §251(f) (1996).
    - (ii) Rural telephone companies shall terminate traffic of a CTU which originates and terminates within the rural telephone company's ELCS or EAS calling scope, where the rural telephone company has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A)(i) of this section.
  - (D) **Small CTUs.**
    - (i) A small CTU may petition for a suspension or modification of the application of this section pursuant to 47 United States Code §251 (f)(2) (1996).
    - (ii) Small CTUs shall terminate traffic of a CTU which originates and terminates within the small CTU's ELCS or EAS calling scope, where the small CTU has an ELCS or EAS arrangement with another DCTU. The termination of this traffic shall be at rates, terms, and conditions as described in subsection (d)(4)(A)(i) of this section.

(d) **Principles of Interconnection.**

- (1) **General Principles.**
  - (A) Interconnection between CTUs shall be established in a manner that is seamless, interoperable, technically and economically efficient, and transparent to the customer.
  - (B) Interconnection between CTUs shall utilize nationally accepted telecommunications industry standards and/or mutually acceptable standards for construction, operation, testing and maintenance of networks, such that the integrity of the networks is not impaired.

- (C) A CTU may not unreasonably:
    - (i) discriminate against another CTU by refusing access to the local exchange;
    - (ii) refuse or delay interconnections to another CTU;
    - (iii) degrade the quality of access provided to another CTU;
    - (iv) impair the speed, quality, or efficiency of lines used by another CTU;
    - (v) fail to fully disclose in a timely manner, on request, all available information necessary for the design of equipment that will meet the specifications of the local exchange network; or
    - (vi) refuse or delay access by any person to another CTU.
  - (D) Interconnecting CTUs shall negotiate rates, terms, and conditions for facilities, services, or any other interconnection arrangements required pursuant to this section.
  - (E) This section should not be construed to allow an interconnecting CTU access to another CTU's network proprietary information or customer proprietary network information, as defined in §23.57 of this title, unless otherwise permitted in this section.
- (2) **Technical Interconnection Principles.** Interconnecting CTUs shall make a good-faith effort to accommodate each other's technical requests, provided that the technical requests are consistent with national industry standards and are in compliance with §23.61 of this title (relating to Telephone Utilities) and implementation of the requests would not cause unreasonable inefficiencies, unreasonable costs, or other detriment to the network of the CTU receiving the requests.
- (A) Interconnecting CTUs shall ensure that customers of CTUs shall not have to dial additional digits or incur dialing delays that exceed industry standards in order to complete local calls as a result of interconnection.
  - (B) Interconnecting CTUs shall provide each other non-discriminatory access to signaling systems, databases, facilities, and information as required to ensure interoperability of networks and efficient, timely provision of services to customers.
  - (C) Interconnecting CTUs shall provide each other Common Channel Signaling System Seven (SS7) connectivity where technically available.
  - (D) Interconnecting CTUs shall be permitted a minimum of one point of interconnection in each exchange area or group of contiguous exchange areas within a single LATA, as requested by the interconnecting CTU, and may negotiate with the other CTU for additional interconnection points. Interconnecting CTUs shall agree to construct and/ or lease and maintain the facilities necessary to connect their networks, either by having one CTU provide the entire facility or by sharing the construction and maintenance of the facilities necessary to connect their networks. The financial responsibility for construction and maintenance of such facilities shall be borne by the party who constructs and maintains the facility, unless the parties involved agree to other financial arrangements. Each interconnecting CTU shall be responsible for delivering its originating traffic to the mutually-agreed-upon point of interconnection or points of interconnection. Nothing herein precludes a CTU from recovering the costs of construction and maintenance of facilities if such facilities are used by other CTUs.
  - (E) Interconnecting CTUs shall establish joint procedures for troubleshooting the portions of their networks that are jointly used. Each CTU shall be responsible for maintaining and monitoring its own network such that the overall integrity of the interconnected network is maintained with service quality that is consistent with industry standards and is in compliance with §23.61 of this title.
  - (F) If a CTU has sufficient facilities in place, it shall provide intermediate transport arrangements between other interconnecting CTUs, upon request. A CTU providing intermediate transport shall not negotiate termination on behalf of another CTU, unless the terminating CTU agrees to such an arrangement. Upon request, DCTUs within major metropolitan areas will contact other CTUs and arrange meetings, within 15 days of such request, in an effort to facilitate

negotiations and provide a forum for discussion of network efficiencies and inter-company billing arrangements.

- (G) Each interconnecting CTU shall be responsible for ensuring that traffic is properly routed to the connected CTU and jurisdictionally identified by percent usage factors or in a manner agreed upon by the interconnecting CTUs.
  - (H) Interconnecting CTUs shall allow each other non-discriminatory access to all facility rights-of-way, conduits, pole attachments, building entrance facilities, and other pathways, provided that the requesting CTU has obtained all required authorizations from the property owner and/or appropriate governmental authority.
  - (I) Interconnecting CTUs shall provide each other physical interconnection in a non-discriminatory manner. Physical collocation for the transmission of local exchange traffic shall be provided to a CTU upon request, unless the CTU from whom collocation is sought demonstrates that technical or space limitations make physical collocation impractical. Virtual collocation for the transmission of local exchange traffic shall be implemented at the option of the CTU requesting the interconnection.
  - (J) Each interconnecting CTU shall be responsible for contacting the North American Numbering Plan (NANP) administrator for its own NXX codes and for initiating NXX assignment requests.
- (3) **Principles regarding billing arrangements.**
- (A) Interconnecting CTUs shall cooperatively provide each other with both answer and disconnect supervision as well as accurate and timely exchange of information on billing records to facilitate billing to customers, to determine intercompany settlements for local and non-local traffic, and to validate the jurisdictional nature of traffic, as necessary. Such billing records shall be provided in accordance with national industry standards. For billing interexchange carriers for jointly provided switched access services, such billing records shall include meet point billing records, interexchange carrier billing name, interexchange carrier billing address, and Carrier Identification Codes (CICs). If exchange of CIC codes is not technically feasible, interconnecting CTUs shall negotiate a mutually acceptable settlement process for billing interexchange carriers for jointly provided switched access services.
  - (B) CTUs shall enter into mutual billing and collection arrangements that are comparable to those existing between and/or among DCTUs, to ensure acceptance of each other's non-proprietary calling cards and operator-assisted calls.
  - (C) Upon a customer's selection of a CTU for his or her local exchange service, that CTU shall provide notification to the primary interexchange carrier (IXC) through the Customer Account Record Exchange (CARE) database, or comparable means if CARE is unavailable, of all information necessary for billing that customer. At a minimum, this information should include the name and contact person for the new CTU and the customer's name, telephone number, and billing number. In the event a customer's local exchange service is disconnected at the option of the customer or the CTU, the disconnecting CTU shall provide notification to the primary IXC of such disconnection.
  - (D) All CTUs shall cooperate with interexchange carriers to ensure that customers are properly billed for interexchange carrier services.
- (4) **Principles regarding interconnection rates, terms, and conditions.**
- (A) **Criteria for setting interconnection rates, terms, and conditions.** Interconnection rates, terms, and conditions shall not be unreasonably preferential, discriminatory, or prejudicial. Interconnection rates, terms, and conditions shall be non-discriminatory.
    - (i) As of the effective date of this section, the following criteria shall be used to establish interconnection rates, terms, and conditions.
      - (I) Local traffic of a CTU which originates and terminates within the mandatory single or multiexchange local calling area available under the basic local exchange rate of a single DCTU shall be terminated by the CTU at local interconnection rates. The local interconnection rates under this subclause also



apply with respect to mandatory EAS traffic originated and terminated within the local calling area of a DCTU if such traffic is between exchanges served by that single DCTU.

- (II) With respect to traffic governed by a DCTU's ELCS arrangement if an NCTU offers, on a mandatory basis, the same minimum ELCS calling scope that a DCTU offers under its ELCS arrangement, an NCTU shall receive, for such traffic, arrangements that are not less favorable than those DCTUs provide each other for terminating mandatory ELCS traffic.
  - (III) With respect to local traffic originated and terminated within the local calling area of a DCTU but between exchanges of two or more DCTUs governed by mandatory EAS arrangements, DCTUs shall terminate local traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar mandatory EAS traffic for the affected area. An NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar mandatory EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.
  - (IV) With respect to traffic that originates and terminates within an optional flat rate calling area, whether between exchanges of one DCTU or between exchanges of two or more DCTUs, DCTUs shall terminate such traffic of NCTUs at rates, terms, and conditions that are not less favorable than those between DCTUs for similar traffic. An NCTU and a DCTU may agree to terms and conditions that are different from those that exist between DCTUs for similar optional EAS traffic. The rates applicable to the NCTU for such traffic shall reflect the difference in costs to the DCTU caused by the different terms and conditions.
  - (V) A DCTU with more than one million access lines and an NCTU shall negotiate new EAS arrangements in accordance with the following requirements.
    - (-a-) For traffic between an exchange and a contiguous metropolitan exchange local calling area, as defined in §23.3 of this title, the DCTU shall negotiate with an NCTU for termination of such traffic if the NCTU includes such traffic as part of its customers' local calling area. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.
    - (-b-) For traffic that does not originate or terminate within a metropolitan exchange local calling area, the DCTU shall negotiate with an NCTU for the termination of traffic between the contiguous service areas of the DCTU and the NCTU if the NCTU includes such traffic as part of its customers' local calling area and such traffic originated in an exchange served by the DCTU. These interconnection arrangements shall be not less favorable than the arrangements between DCTUs for similar EAS traffic.
    - (-c-) An NCTU shall have the same obligation to negotiate similar EAS interconnection arrangements with respect to traffic between its service area and a contiguous exchange of the DCTU if the DCTU includes such traffic as part of its customers' local calling area.
  - (VI) NCTUs are not precluded from establishing their own local calling areas or prices for purposes of retail telephone service offerings.
- (ii) The commission shall specifically review the policies of this section to determine whether the local interconnection rates established pursuant to subclause (I) of subsection (d)(4)(A)(i) of this section should apply to traffic in addition to traffic described in that subclause. The commission shall complete an initial review no later than two years from the effective date of this section.